



Federal Communications Commission
Washington, D.C. 20554

MAY 27 1998

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JUN - 1 1998

The Honorable Alphonse M. D'Amato
United States Senator
100 South Clinton Street
P.O. Box 7216
Syracuse, New York 13261-7216

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Dear Senator D'Amato:

Thank you for your letter dated January 28, 1998, on behalf of your constituent Dennis R. Baldwin, Town of Van Buren, New York, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in his community. Your constituent's letter refers to issues being considered in three proceedings that are pending before the Commission. In MM Docket No. 97-182, the Commission has sought comment on a Petition for Further Notice of Proposed Rule Making filed by the National Association of Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In WT Docket No. 97-192, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comment on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter, your constituent's letter, and this response will be placed in the record of all three proceedings and will be given full consideration.

At the same time, the Commission is actively pursuing initiatives that we hope will render any Commission action limiting State and local authority unnecessary. Commission staff, working with the Commission's Local and State Government Advisory Committee, is bringing together representatives of industry and municipal governments to discuss mutually acceptable solutions to the challenges posed by facilities siting. Chairman Kennard has stated that preemption of local zoning authority should be a remedy of last resort, and that the Commission should not consider preemption until the possibilities for constructive dialogue have been exhausted.

Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,



for Steven E. Weingarten
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

cc: CWD

Dockets (2)

John Conwell

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January 28, 1998

Washington, DC 20554

Ms. Karen Kornbluh
Director, Office of Legislative
and Intergovernmental Affairs
Federal Communications Commission
Room 808
1919 M Street, N.W.
Washington, DC 20554

Dear Ms. Kornbluh:

Because of the desire of this office to be responsive to all
inquires and communications, your consideration of the attached is
requested.

Your findings and views, in duplicate form, will be
appreciated.

Please reply to my Syracuse office.

Sincerely,



Alfonse M. D'Amato
United States Senator

AMD/mt

Attachment

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December 31, 1997

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Hon. William Kennard
Chairman
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554

Ex Parte Letter Re: Cases WT97-197, MM Docket 97-182 & DA96-2140

Dear Chairman Kennard:

I am writing as attorney for and at the request of the Town of Van Buren, New York Planning Board requesting that the FCC terminate all action in the referenced cases, as they attempt to make the FCC the "Federal Zoning Commission" for cellular and broadcast towers in violation of the intent of Congress, the U.S. Constitution and the principles of Federalism.

Congress and the courts have long recognized that zoning is a matter of local concern. In this regard, we respectfully contend that the FCC has little zoning knowledge or expertise and certainly is not readily accessible to most citizens including those residing in the Town of Van Buren.

For these reasons and others, Congress expressly preserved local zoning authority over cellular towers in the 1996 Act. It appears to us that the FCC is now trying to recover this jurisdiction by issuing rules which improperly and unconstitutionally infringe on local zoning authority.

The FCC's efforts to assume jurisdiction over any local zoning matter where RF radiation is mentioned is simply unacceptable to us in Van Buren since such an effort ignores the fact that municipalities cannot always control the statements citizens make during meetings before

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legislative and planning bodies. In fact, many municipalities, by state or local law, are required to allow citizens to speak on any topic they wish, even on items that are not a part of the agenda.

Some of our citizens may well be concerned about radiation from cellular towers, notwithstanding that such concern may be unfounded. For the reasons described, we cannot, and do not wish to, prevent them from mentioning their concerns to us. The FCC's attempt to use this situation as a means to assume zoning authority and reverse local decisions violates basic principles of Federalism, Freedom of Speech and the rights of our citizens to petition their government.

This is particularly true if a municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

For similar reasons the FCC cannot and should not "second guess" the reasons for a municipality's decision. The FCC, like the courts, is bound by the stated reasons given by a municipality. Either reasons are sufficient to uphold the decision or they are not. The FCC should not be in a position to "second guess" a municipality's true reasons anymore than the courts can "second guess" the true reasons for the FCC's decisions.

The FCC's proposal to ban moratoria on cellular towers is objectionable for many of the reasons set forth above. It also fails to recognize that, for some municipalities, moratoria are a well recognized planning and zoning tool, particularly while they review and update their zoning codes. More importantly, Congress took away the FCC's authority over cellular tower zoning, and this includes moratoria.

Similarly, we respectfully request the termination of the FCC's proposed rule making preempting local zoning of broadcast towers. As you know, broadcast towers can be over 2,000 feet high -- frequently, among the tallest structures in a given locality. It is therefore extremely troublesome that the FCC would propose that municipalities cannot consider the impact of such towers on property values, the environment or aesthetics and that even safety considerations take second place. Safety always has to be the first priority.

Further, setting artificial time limits for municipalities to act on environmental, zoning and building permit approvals for such towers serves no proper purpose. In fact, we believe it to be a violation of the U.S. Constitution, the Communications Act and Federalism for the FCC to put time limits on municipalities to act on all local approvals and then provide that all such applications will be automatically deemed granted if the municipality doesn't act within this timeframe -- even if the application is incomplete or violates state or local law.

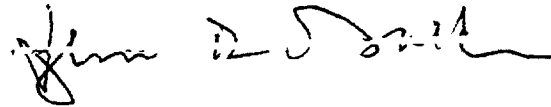
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For the above reasons, we respectfully request that the FCC terminate the referenced proceedings without taking the actions proposed therein.

Respectfully yours,

Members of the Planning Board



DRB/ap

Dennis R. Baldwin, Attorney
Town of Van Buren Planning Board

cc: Elizabeth McCarthy-Bowers, Supervisor, Town of Van Buren
Anthony J. Geiss, Jr., Chairman, Town of Van Buren Planning Board
Members of the Planning Board, Town of Van Buren
William F. Caton
Hon. Patrick Moynihan
Hon. Alfonse M. D'Amato
Hon. James T. Walsh
Kevin McCarty